

Summation - People

1 (Whereupon, court stood in recess while the
2 court deliberated.)

3 THE CLERK: Case on trial, the People of the
4 State of New York against John Kogut, Indictment 61029
5 of 1985.

6 Both sides ready?

7 MR. CASTELEIRO: Ready.

8 MR. BIANCAVILLA: Ready.

9 THE COURT: The Court will deliver its
10 verdict as follows:

11 I have reviewed the evidence in this case.
12 I have, of course, listened to the evidence for the
13 last few months. I reiterate the great respect that I
14 have for both of the attorneys and appreciate the fact
15 you have been so courteous throughout the trial.

16 In analyzing the case, I felt the best way
17 to deal with it would be from the bottom up, so to
18 speak.

19 I reached my decision, first, with respect
20 to count three, and it is the finding of this Court
21 that I do not believe that the question hairs were
22 left in the van on or about November 10th of 1984, and
23 absent those hairs, there is no corroboration,
24 whatsoever, for the defendant's confession concerning
25 the count of rape.

Proceedings

1 That fact, plus the lack of any physical
2 injury, the unknown semen that was in poor Theresa
3 Fusco, and the other evidence concerning the fact of a
4 possible consensual sexual liaison by Theresa Fusco,
5 leads this Court to the conclusion that the defendant
6 is not guilty of count three of this indictment.

7 Count two of the indictment charges the
8 defendant with murder in the course and furtherance of
9 the crime of rape in the first degree.

10 The rape having not been established, the
11 Court, obviously, finds the defendant not guilty of
12 count two.

13 That brings us to count one which is the
14 intentional murder count, and, the Court having found
15 that there is no rape, then the issue comes up as to
16 why then kill Theresa Fusco.

17 Motive, of course, is not an element of the
18 crime of murder, and in the case -- and the proof in
19 this case then comes down to one thing, and one thing
20 only, and that is the confession of Mr. Kogut.

21 In order for a trier of fact to accept and
22 apply a defendant's confession, it must be found
23 beyond a reasonable doubt that the confession is not
24 only voluntary but truthful as well.

25 I believe that the scientific evidence in

Proceedings

1 this case proves that too many material facts set
2 forth in the defendant's confession are clearly not
3 truthful.

4 The Court will not accept the confession,
5 and, accordingly, finds the defendant not guilty of
6 murder in the second degree under count one.

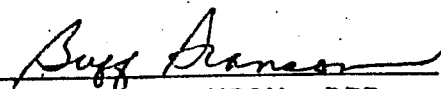
7 That is the verdict of this Court.

8 Again, I thank both of you.

9 COURT OFFICER: Remain seated.

10 * * *

11 Certified to be a true and
12 accurate transcript.

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16 BUFF BRANSON, RPR
17 Senior Court Reporter
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